Customs Ordinance or under any statute or law in existence in Malaya, because in fact no offence whatsoever had been committed by him.

The learned Deputy argued that it was perfectly clear to the appellant that he was being suspected of an offence under the Customs Ordinance, that the Police Sergeant is an "officer of customs" for the purposes of that Ordinance and that by virtue of section 112(1)(c) any officer of customs may arrest without warrant any person against whom a reasonable suspicion exists that he has been guilty of an offence against the Ordinance or any regulation made thereunder. Subsection (2) of that section provides that every person so arrested shall be taken to a police station or may be detained in the custody of the proper officer of customs. The learned Deputy argued that the appellant was in lawful custody and as he had escaped from it he had committed an offence under section 224 of the Penal Code.

The evidence showed that a police boat on patrol duty in Penang Harbour saw a speed boat coming from the direction of the Island and heading towards Prai. Having caught up with the speed boat the police stopped the boat and examined it. In the boat were two persons, one of whom was the appellant, neither of whom had their identity cards on them. On examination of the speed boat it was found to contain nothing. Nothing was found on either of the occupants. The police sergeant said that his suspicions were aroused because they had no identity cards and they could not give a satisfactory explanation as to why they were there. He further said in cross-examination that they had not committed any offence and he suspected the appellant of being a smuggler.

It was clear that there was no evidence of the commission of any offence against the Customs Ordinance, 1952 or any regulation made thereunder and accordingly although there may have been grounds for suspicion on the part of the police sergeant there were no reasonable grounds for suspicion that he had been guilty of an offence against the Ordinance or any regulation made thereunder. There was no ground therefore for taking the appellant into custody and the custody was consequently unlawful. Thus there was no lawful detention within the meaning of section 224 of the Penal Code.

I accordingly allowed the appeal and quashed the conviction and the order of binding over.

Appeal allowed.

RE SINGAPORE COMMERCIAL HOUSE & FACTORY EMPLOYEES' UNION

[O.C.J. (Chua J.) March 9, 1964]

[Singapore — Originating Summons No. 23 of 1964]

Trade Union—Rules and Constitution—Interpretation—"commercial house" and "factory employees"—Whether bus, theatre and film companies and bakery houses are "commercial houses"—Application under O.LII r. 5(1) of the Rules of the High Court, 1934.

Rule 3(a) of the Singapore Commercial House and Factory Employees' Union's Rules and Constitution provides "The Union is open to all workers....who are employed as commercial house and factory employees". On an application for the determination of the question whether workers employed in bus, theatre and film companies and in bakery houses are eligible to be members of the Union,

Held: (1) bus, theatre and film companies, and bakery houses are not "commercial houses" and employees of the bus, theatre and film companies are not eligible to be members of the Union;

(2) employees of bakery houses are eligible for membership of the Union as they come within the meaning of "factory employees".

APPLICATION.

T. T. Rajah for the applicant.

Tan Hoay Djin (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Chua J.: The applicant in this Originating Summons is the Singapore Commercial House and Factory Employees' Union (hereinafter called the Union), a trade union registered in Singapore. The application is for the determination of the question whether workers employed in bus companies, theatre and film companies and in "bakery houses" enumerated in paragraph 7 of the affidavit of Phua Siong Bee, the Secretary-General of the Union, are eligible to be members of the Union under rule 3(a) of the Rules and Constitution of the Union.

The objects of the Union are, *inter alia,*

"to secure the complete organisation and unity of all workers employed as Commercial House and Factory Employees and to promote industrial, social and intellectual interest of the members." (rule 2(a)).

Rule 3(a) of the Union's Rules and Constitution provides as follows:—

"The Union is open to all workers regardless of race, over the age of eighteen, who are employed as Commercial House and Factory Employees."

The applicant contends that the bus companies, the theatre and film companies and "bakery houses" set out in paragraph 7 of the affidavit of Phua Siong Bee fall within the scope of "Commercial House" and their employees are eligible to be members of the Union.

Mr. T. T. Rajah for the applicant contends that any company or firm having profit as their primary aim is a "Commercial House".

Mr. Rajah, in my view, is placing an extensive meaning to the term "Commercial House". Not all business carried on for the purpose of profit is a "Commercial House". A "Commercial House" is a business occupied with or engaged in commerce. The word "commerce" is a term of a specific meaning. There cannot be commerce except where commodities are bought and sold and to answer to the description of "Commercial House" the business must be conducted by buying and selling of commodities. Bus, theatre and film companies, and "bakery houses" are not "Commercial Houses" and the employees of the bus, theatre and film companies enumerated in paragraph 7 of the affidavit of Phua Siong Bee are not eligible to be members of the Union.

As regards "bakery houses" I take them to mean the bakers' establishments where bread is made. I am of the view that the employees of such an establishment are eligible for membership of the Union as they come within the meaning of "Factory Employees".

Order accordingly.

HAJI HUSSEIN & ORS. v. THE GOVERNMENT OF THE STATE OF KEDAH & PUTEH BIN HAJI MAN

[F.C. (Thomson L.P., Wylie C.J. (Borneo) & Tan Ah Tah F.J.) March 11, 1964]

[Penang — Federal Court Civil Appeal No. 2 of 1964]

Land—Arrears of quit rent etc.—Auction of land.

FEDERAL COURT.

Lim Kean Chye and *Mohamed Zahir bin Ismail* for the appellants.

Hamzah bin Dato Abu Samah (Legal Adviser, Kedah) for the 1st respondent.

M. Abraham for the 2nd respondent.

An appeal against the judgment of Suffian J. in the case of *Haji Hussein & Ors.* v. *The Government of the State of Kedah & Anor.* reported *supra* at p. 28, came before the Federal Court at Penang on March 11, 1964.

After some discussion relating to the points that the land revenue involved was not owed by the plaintiffs but by the personal representative of the deceased landowner in whom by reason of section 48 of the Kedah Land Code the land was vested and that no attempt had been made to serve notices in any way upon the representative, although at the material date the land was vested in the Chief Justice by reason of section 39 of the Probate and Administration Ordinance, 1959, counsel asked for an adjournment. Shortly afterwards counsel for the State of Kedah stated in Court that all parties were agreed that the appeal should be allowed; that the sale of the land should be annulled; that the money paid at the auction should be refunded by the State of Kedah to the second defendant to the original proceedings; and that there should be no order as to costs.

Solicitors: *Jayadewa, Zahir & Izmi; M. Abraham.*

Appeal allowed.

NG HENG TECK v. LEE KWEK CHUAN

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) March 19, 1964]

[Singapore — Federal Court Civil Appeal No. 92 of 1963]

Negligence—Damages for personal injuries—Duty of care—Contributory negligence—Quantum of damages.

Damages—Personal injury—Leg—Fracture of femur, tibia and fibula—Shortening of leg—Knee—Stiffness and limited flexion—Ankle and foot—Limited movement—Permanent disabilities—Pain and suffering.

Precedent—Damages—Malayan and Singapore cases.

The plaintiff, a 61 year old Chinese herbist shop proprietor, was injured by the defendant's motor cycle while he was crossing a road. The defendant was riding his motor cycle approximately on the crown of the road. There was no traffic about and on seeing the plaintiff the defendant slowed down sounded his horn but continued straight on and collided with the plaintiff. The plaintiff sued for damages. At the trial liability was denied and it was pleaded that the plaintiff was guilty of contributory negligence. The learned trial Judge held that the plaintiff was not guilty of contributory negligence and he awarded damages including an assessment of general damages at $15,000 to the plaintiff. On appeal against the assessment of general damages,

Held: there was no ground for interfering with the finding of the trial Judge as to the assessment of damages and the appeal must be dismissed.

So far as quantum of damages is concerned Malayan cases are quotable in Singapore as authority for awards for similar injuries and also Singapore cases are quotable in Malaya and are accepted there.

Cases referred to:—

(1) *Mamat* v. *Abdul Manaf* [1963] M.L.J. 345.

(2) *Abdul Majid* v. *Pahang Lin Siong Motor Co. Ltd. & Anor.* [1963] M.L.J. 346.

(3) *Tessensohn* v. *Tan Yew Chye* digested [1964] M.L.J. XLV.

(4) *Goh Joo Hin* v. *Lim Thor Bah* digested [1964] M.L.J. XLV.

In addition the following cases were also cited in argument:

Low Ah Tow v. *Yusof Bin Kayab* [1954] M.L.J. 112; *Loughran* v. *Armstrong* [1956] M.L.J. 137; *Abdul Samad* v. *Gammon & Christiani-Neilsen* [1962] M.L.J. 394; *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29; *Aziz Bin Shariff* v. *Easy Bus Co. & Anor.* [1958] M.L.J. 261.

In the Court below the following judgment was delivered:

Buttrose J. (delivering oral judgment): In this case I am quite satisfied that the plaintiff